

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Digital Audio Broadcasting Systems	)	MM Docket No. 99-325
And Their Impact on the Terrestrial	)	
Radio Broadcast Service	)	

**COMMENTS**

Native American Christian Voice, (hereafter “Native”) by its undersigned counsel hereby respectfully submits these comments in response to the *Second Report And Order, First Order On Reconsideration And Second Further Notice of Proposed Rule Making* (hereafter the “Second Report”) in the above captioned proceeding.<sup>1</sup>

**I. BACKGROUND**

1. The Commission notes in the Second Report that it has an obligation to ensure that broadcast radio and television stations serve the "public interest, convenience and necessity,"<sup>2</sup> and that to ensure that broadcasters serve the public interest, convenience and necessity, the Commission requires licensees to comply with various program-related and operational duties. In 1987, the Commission eliminated the former rule requiring a broadcast station to

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<sup>1</sup> FCC 07-33, released May 31, 2007; 72 FED REG. 157 (2007).

<sup>2</sup> 47 U.S.C. § 303. See ¶ 61, *supra*.

originate a majority of its non-network programming from its main studio.<sup>3</sup> This action was specifically based largely on technical advances in the production and distribution of programming during the prior thirty-five years. In 1995, in response to continuing improvements in the stability of station monitoring and transmission equipment, the Commission authorized unattended technical operation of broadcast stations and expanded the ability of stations to control and monitor station technical operations from remote locations, including automating their ability to operate pursuant to the Emergency Alert System (“EAS”), which was specifically designed for unattended operations.<sup>4</sup> Broadcast licensees of the Commission have broadly embraced this new technical flexibility. Many stations now operate for extended periods without station personnel at or near transmission facilities.

2. Certain noncommercial, educational FM stations operate as “satellites” of a co-owned parent noncommercial station, and have neither a main studio in the specified community of license, nor any staff whatsoever. These stations operate under a “main studio waiver” wherein they are completely automated and are monitored by their parent station and its staff.

3. The Commission now seeks comment, *inter alia*, on whether the widespread reliance on automated operations limits the ability of law enforcement and public safety officials to use radio broadcast stations

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<sup>3</sup> *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215 (1987).

<sup>4</sup> *Id.* at 11481.

effectively during emergencies. Although EAS equipment can be programmed to operate automatically in certain circumstances, when a state or local alert is initiated by designated local authorities, initial input of the alert and activation of the originating EAS ENDEC must be done manually. The Commission noted that it is currently considering issues related to the Emergency Alert System, including transmission of state EAS alerts, in its ongoing EAS proceeding.<sup>5</sup>

## **II. NONCOMMERCIAL FM BROADCAST STATIONS OPERATING WITH “MAIN STUDIO WAIVERS” AS SATELLITE STATIONS.**

### **A. THE COMMISSION SHOULD NOT REQUIRE NONCOMMERCIAL, EDUCATIONAL FM STATIONS THAT HAVE BEEN GRANTED “MAIN STUDIO WAIVERS” TO OPERATE AS SATELLITE STATIONS TO BECOME MANNED IN CONNECTION WITH THEIR DIGITAL AUDIO BROADCAST SYSTEM CONVERSIONS, OR TO INCREASE STAFF DURING NORMAL EQUIPMENT AUTOMATION OPERATION.**

4. The Commission has on many occasions granted licenses for satellite operation waivers to numerous noncommercial stations in small communities to allow their main studios to be located at the studio of a co-owned, noncommercial station. These waivers have been granted to stations located both in contiguous communities to, and at a great distance from, the “parent station.” See, KTLZ(FM), Cuero, Texas, with a main studio waiver for operation at WLOG(FM), Markleysburg, Pennsylvania (FCC File

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<sup>5</sup> See *Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625 (2005). See also *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, Notice of Proposed Rulemaking, 21 FCC Rcd 7320 (2006).

20050708ACI). These satellite stations operate without any local staff in place and are fully automated, with the “parent station” monitoring the operation of the satellite.

5. The Commission has consistently found “good cause” to exist for granting a main studio waiver and allowing unmanned, satellite stations in instances based upon the economic benefits to noncommercial stations that are provided by such centralized operations from a single studio. See, *The President and Board of Trustees Miami University*, 7 FCC Rcd 2902 (1992); *Sound of LIFE, Inc.*, 4 FCC Rcd 8373 (1989); and *Lift Him Up Outreach Ministries, Inc.* 3 FCC Rcd 5571 (1988). In fact, many satellite noncommercial stations would never have been built and placed into operation were a main studio waiver not granted, and were the licensee required to incur the significant expense of staffing the facility. In these circumstances, the Commission has recognize that a licensee of a noncommercial satellite station will meet its local service obligations, and thus has routinely granted requests for a main studio waiver as consistent with the public interest and the requirements of the Communications Act of 1934, as amended. See *KMAS-TV, Steamboat Springs, Colorado, ID No. 20373*, 22 FCC Rcd 2183 (February 02, 2007) , *Delmarva Broadcasting Corporation MO&O*, FCC 04-90, released April 14, 2004; and *Living Faith Ministries, Inc.* 21 FCC Rcd 5046. (2007).

6. Based on this Native submits that the Commission should not act in a manner that would modify the licenses for these main studio waiver-satellite stations by requiring them to be locally staffed. Such an action is unnecessary under the public interest standard, and would result in numerous satellite stations ceasing their operation due to the expense involved in local staffing of stations serving small communities. Rather, any action the Commission takes in this regard should relate solely to the operation of the parent station and its main studio, not the unmanned satellite station.

#### B. ADDITIONAL STAFFING OF AUTOMATED STATIONS

7. Native's experience as a noncommercial station operator is that the technical advances in automated equipment allow its stations to respond to an EAS situation just as quickly as a fully staffed station. Each station has individualized EAS equipment located at the transmitter site. The equipment instantly interrupts regular programming, and relays each essential local EAS message to the local population without delay. This efficient system is often superior to the delays that might be created while waiting for local staff to review the EAS information, decide on an appropriate course of action, rewrite the information, record the information, and then transmit the information over the air. This time saving is invaluable for situations requiring a quick response. The EAS equipment is also more consistently available than staff, since it never needs lunch breaks,

restroom breaks, or time off for holidays. EAS gear never leaves the station early, never has family emergencies, or stays home with the flu, and is always ready to instantly break into network programming with EAS warnings and messages. This level of reliability is tracked by computer files and tape at any time. Moreover, nothing inherent in the change over to a digital system will have any effect on the reliability of the present automation systems in effect.

8. Based on this, Native submits that the Commission should not act in any manner in this proceeding that would modify the licenses for these main studio waiver-satellite stations and require stations that are automated to hire additional local staff. Such an action is unnecessary under the public interest standard, would be no more efficient than the current automated EAS operation, and would result in numerous noncommercial stations ceasing their operation due to the expense involved in such local staffing of stations.

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